must by the same section 15 declare whether the judgment or order is to be enforced against the sub-tenant or not. No Court should declare any judgment enforceable against a sub-tenant unless it has reason to be satisfied that he is not entitled to protection. Prerogative writs may be invoked when a person is threatened by an inferior Court acting in excess of jurisdiction.

COURT OF APPEAL.

H. R. Wilson for the plaintiff-respondent.

H. S. Godwin for the defendant-appellants.

Cur. Adv. Vult.

The Judgment of the Court was delivered by Sir Charles Murray-Aynsley, C.J., (Singapore), with which Mathew, C.J., (F.M.), and Storr, J., concurred.

Sir Charles Murray-Aynsley, C.J. : — In this case certain premises were let in about the year 1945. In October, 1946, part of the premises were sub-let.

In September, 1947, the tenant signed an agreement with the executors of the landlord (the tenant says that he did so in ignorance of the contents) by which sub-letting was forbidden without leave. At the time of the sub-letting there was no prohibition. Later the executors of the landlord obtained possession against the tenant on account of non-payment of rent. It appears to me clear that the sub-tenant was entitled to protection by section 15 of Ordinance 25 of 1947. The prohibition must exist, I think, at the time of sub-letting.

The sub-tenant was not a party to the proceedings against the tenant. In spite of this the learned District Judge made the order for possession enforceable against the sub-tenants, if any. The Court must by the same section 15 declare whether the judgment or order is to be enforced against sub-tenants or not. I think that the Court should not declare any judgment enforceable against sub-tenants unless it has reason to be satisfied that they are not entitled to protection. I do not see how any Court can be so satisfied without hearing them. In the circumstances the Court below was wrong in declaring the judgment or order enforceable against sub-tenants.

The difficulty in this case was one of procedure. The sub-tenant was not a party to the proceedings; he could not therefore appeal. Unless he did something he was liable to be ejected. It is naturally difficult to find authority in a situation like the present one. It does appear, however, that the prerogative writs may be invoked when a person is threatened by an inferior Court acting in excess of jurisdiction.

In the circumstances I am not prepared to say that the learned Judge was wrong. I think that the appeal should be dismissed with costs. Deposit to be paid out to the respondent.

Appeal dismissed.

PAIMAN BIN DOYO v. PUBLIC PROSECUTOR.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) June 9, 1952]

[Kuala Lumpur — Criminal Appeal No. 21 of 1952]

Criminal Procedure — Murder — Summing up — Evidence of cause of death — Points to be put to doctor — Unsatisfactory summing up — Misdirection — Penal Code, s. 302.

An example of a case of unsatisfactory summing up and misdirection.

CRIMINAL APPEAL.

K. C. Chia for the appellant.

B. Sheldon (D.P.P.) for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by :—

Mathew, C.J. : — The appellant was convicted in the High Court of the murder of one Mingan bin Majikon, contrary to section 302 of the Penal Code, and was sentenced to death. On the evidence of the prosecution witnesses it was established that on the night of the 2nd March, 1951, the appellant, in the presence of Rosdi, Ayob, Dakil and Waksimin, said that he was going to kill Mingan. According to Waksimin the appellant only threatened to beat Mingan. On the morning of the 3rd March, 1951, the deceased left Ulu Yam Estate on his bicycle. He was accompanied by Sa'ing (alias Sawabi) on another bicycle. On the estate road they were stopped by the appellant. Sa'ing's account of what happened was as follows. The appellant threw sand on Mingan's face. Mingan then ran away leaving his bicycle on the road. The appellant drew a knife and chased Mingan. They vanished from view behind some bushes, and then Sa'ing heard the deceased cry "I am dying". Sa'ing remounted his bicycle and went down the road in the direction of Rawang. Later that day the appellant returned to Ulu Yam Estate and told Rosdi that he had succeeded in killing Mingan. Esah was present but could not understand the conversation that took place as the appellant and Rosdi spoke in Javanese.

The appellant then changed his clothes, gave them to Dakil a rubber tapper to wash together with a knife and sheath. The appellant then borrowed $10 from Rosdi and left saying that he was going to Muar to visit his sick father.

Nobody who was connected with this affair reported to the police, but on the 5th March 1951 a body was found in a ravine about 50 feet below the estate road and was removed to Kuala Lumpur where a post mortem examination was conducted by Dr. Low Nan Heng. The body was then bloated, decomposed and covered with maggots. The doctor gave his opinion that the cause of death was fracture of the skull, and gave as his opinion that a knife could not have caused the fracture. He said that a wound he had found on the neck could have been caused by the knife and would have resulted in death from haemorrhage if not attended to. The body when discovered was about 50 feet below the estate road, in what is described as a ravine. The place where it was found is on a fairly steep contoured slope covered with lallang and the stumps of old rubber trees.

Counsel who appeared for the appellant has contended that the learned trial judge misdirected the assessors on two points. First as regards the identification of the body. We agree with Counsel for the appellant that the identification of the body could have been even better established had the clothes been identified as belonging to Mingan, but the fact that Mingan's identity card was found in the pocket of the dead man and that Mingan's bicycle was found off the road in a place nearby is sufficient to identify the body as being that of Mingan beyond all possible doubt. The second ground of appeal is that the learned trial judge's directions on the question of the medical evidence amounted to grave misdirection. The learned trial judge in the course of the summing up said :—

"The medical evidence is very important, almost always. But in this case it is less accurate than usual because the body was considerably decomposed before the medical officer saw it and he could not ascertain so accurately the precise nature of the wound. In spite of the decomposition, the edges of the wound were still clearly defined, so the doctor was quite certain that the throat wound was caused by a sharp instrument. He said that the throat wound not be instantly fatal but that it would cause bleeding so severe that death from the bleeding would follow unless it was very quickly stopped. Everybody knows that cutting the throat is a fairly quick way of killing an animal — or a person. So if you feel satisfied that a stab or a slash with this instrument, or one like it, used with sufficient force to cut the deep tissues of the throat, means that whoever did it intended a probably fatal wound, then the offence is murder even without an express intention to kill."

And later :—

"The medical officer said that after completing the post mortem he was trying to think how the injuries as a whole could have been caused. And the most likely way was the throat wound followed by a fall from a height on to something hard which brought about the actual instant death owing to the fracture of the skull. He had not seen the spot where it happened but to some extent his evidence supports the evidence of Sa'ing as to the manner in which the thing happened. There was this ravine, the ground fell away steeply; Mingan ran away, retreating from a man who threw sand at him, and apparently was going to assault him with a knife. There was a struggle that may well have been on the brink of the road, over steep land and they went out of view of Sa'ing behind the bushes, and then the man fell on to one of those logs. That would account for it. So you must take it that the assailant, whoever he was, did not directly cause the fracture of the skull. He could not have done it with that knife. Supposing that is how it really happened, the body would be sprawled over, and close to, the log on which the man fell. But the body was found straightened out, more or less tucked under the side of the fallen tree, with the feet together, on its back and the hands by the sides. So if it happened as I suggested (my suggestion really being the doctor's suggestion, applying what we know about the site) it necessarily follows that somebody re-arranged the body afterwards."

Had it been established by the medical evidence that the cause of death was the knife wound, no exception could be taken to the summing up, but in fact the doctor gave as the cause of death the fracture of the skull which could not have been caused by the knife that the appellant had in his hand. We find some difficulty, as also must have the assessors, in accounting for the manner in which the deceased sustained the head injuries. The place where the deceased was found is about 50 feet below the estate road and is covered with lallang. Although there are stumps of rubber trees on the slope it is difficult to understand how the deceased could have sustained the multiple fractures of the skull on such a slope. If a stick had been used to cause the fractures, very considerable force, according to the doctor, would have had to be used. It was unfortunate that the theory that the deceased was first stabbed and then fell or was thrown down the slope was not put more fully to the doctor.

There were a number of points which should have been put to the doctor in an attempt to establish whether the fracture to the skull or the knife wound was inflicted first. Had the deceased fallen down the slope in question not having sustained a severe knife wound in the throat, was it likely that he could have fallen in such a way as to fracture his skull? Would the fracture of the skull have resulted in instantaneous death? Would it have been possible for the deceased to have cried out three times "I am dying" after his skull had been fractured? The answers to all these questions would have tended to establish whether the knife wound

was or was not inflicted first. It was essential to clear up these points in view of the doctor's specific opinion that the cause of death was multiple fracture of the skull. The only question which was put to the doctor on the fall theory resulted in the answer :—

"If the lacerated wounds were caused first — and then the body was thrown from a height and the head struck some hard surface, the fracture might be caused in that way."

The summing up by the learned trial judge was, in our view, unsatisfactory in four respects. First, his summing up on the medical evidence, where he says :—

"And the most likely way was the throat wound followed by a fall from a height on to something hard which brought about the actual instant death owing to the fracture of the skull."

Here there is a clear misdirection as the doctor requires a "throwing" not a "falling" to cause the head injuries. Further, there is no statement by the doctor that the head injuries would cause instant death.

Secondly, on the question of the finding of the body, the learned trial judge said :—

"So you must take it that the assailant, whoever he was, did not directly cause the fracture of the skull. He could not have done it with that knife. Supposing that is how it really happened, the body would be sprawled over, or close to, the log on which the man fell. But the body was found straightened out, more or less tucked under the side of the fallen trees, with the feet together, on its back and the hands by the sides. So if it happened as I suggested (my suggestion really being the doctor's suggestion, applying what we know about the site) it necessarily follows that somebody re-arranged the body afterwards. Also the man's bicycle was found a considerable distance away in the lallang. Somebody other than Mingan shifted his bicycle. That, gentleman, is consistent with the thing being a murder, an intentional murder hiding the body. But supposing you had a quarrel with a man, got into a fight with him, intended to hurt him but did not really intend to kill and then you found you had killed him, you might still want to hide the body to conceal the crime. The concealment of the body is entirely consistent with the death having been due to a definite crime. But the concealment of the body does not necessarily point to murder as distinct from the smaller offence."

The learned trial judge in this passage invites the assessors to draw sinister conclusions from the position in which the body was found and indicates that the body was deliberately concealed. But under cross-examination Inspector Periera said :—

"There was lallang round the body — growing — body not artificially concealed but in an obscured position — it was dusk when I arrived."

This, in our opinion, was a misdirection on the facts.

Thirdly, the learned trial judge's direction on the bloodstained shirt was not satisfactory. The assessors may well have understood from the summing up that though no traces of blood were found by the Government Analyst, this failure to find blood did not detract from the credibility to be attached to evidence of witnesses who said there was blood in the shirt.

Fourthly, the learned trial judge in his summing up says :—

"So if you feel satisfied that a stab or a slash with this instrument or one like it used with sufficient force to cut the deep tissues of the throat, means that whoever did it intended a probably fatal wound, then the offence is murder even without an express intention to kill."

This in our view is a misdirection on the law and on the facts. As we have already said, the medical evidence established the cause of death as multiple fracture of the skull. The learned trial judge has not dealt adequately with the fractures of the skull and, in this passage of his summing up referred to above, has in effect told the assessors they may ignore the fractures to the skull and pay attention only to the knife wound. The knife wound did not in fact kill the deceased, and it was wrong in law for the learned trial judge to tell the assessors that they could base a conviction for murder on the knife wound.

For these reasons we do not consider that the conviction should stand. We accordingly allow the appeal and order the appellant to be released.

Appeal allowed.

CHOW CHEE YONG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Abbott, J.) June 16, 1952]

[Seremban — Criminal Appeal No 3 of 1952]

Customs Enactment, 1936, s. 114(i)(e) — Guilty knowledge — Re-trial.

The appellant was a dealer in watches who was charged with having contravened section 114(i)(e) of the Customs Enactment, 1936, in that he was knowingly in possession of a valuable gold watch on which customs duty had not been paid. There was evidence that the watch had been purchased in Singapore by one Mr. Brown, who later sold it to the appellant. The Magistrate, apparently, accepted the appellant's statement to the effect that when he purchased the watch he did not know whether customs duty had been paid on it or not. The learned Magistrate, however, convicted the appellant for having possession of the watch.

Held, that (1) the onus of proving that he did not know that customs duty had not been paid lay upon the appellant; (2) the matter for determination was a matter of guilty knowledge; and (3) this was a proper case for a re-trial.

Cases referred to :—

(1) *Rex v. Aves* (1950) 2 All E.R. 330.

(2) *Rex v. Carr-Braint* (1943) 2 All E.R. 156; (1943) K.B. 607.

CRIMINAL APPEAL.

P. Hall for the appellant.

D. C. Jackson (D.P.P.) for the respondent.